

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT CINCINNATI**

RYAN D. HOBBS,

Plaintiff,

:

Case No. 1:17-cv-441

- vs -

District Judge Michael R. Barrett  
Magistrate Judge Michael R. Merz

DEREK FAULKNER, et al.,

Defendants.

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**REPORT AND RECOMMENDATIONS ON MOTION FOR RELIEF  
FROM JUDGMENT UNDER Fed.R.Civ.P. 60(d)(1)**

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This case is before the Court on Plaintiff's Motion for Relief from Judgment under Fed.R.Civ.P. 60(d)(1)(ECF No. 96).

Judgment was entered in this 42 U.S.C. § 1983 action on March 29, 2019 (ECF Nos. 75, 76). Hobbs appealed (Notice of Appeal, ECF No. 77), but did not pay the appellate filing fee despite Judge Barrett's certificate to the Court of Appeals that any appeal would be objectively frivolous. The Court entered a Deficiency Order on April 5, 2019, which Hobbs has not yet obeyed (ECF No. 80).

Despite the pendency of the appeal, Hobbs filed a motion for relief from judgment purportedly under Fed.R.Civ.P. 60(d)(3) on June 28, 2019, in which he asserted he wished to attack this Court's final judgment "as void through an independent action." (ECF No. 85). Because an appeal was pending, the Magistrate Judge recommended deferring consideration of the motion

pending an appellate decision (Report, ECF No. 86). Upon recommittal after Hobbs objected, the Magistrate Judge recommended that the Motion be denied and noted “Hobbs asserts at the outset of his Motion that this is an independent action under Fed.R.Civ.P. 60(d)(3). It is nothing of the sort. An independent action is just that, a new lawsuit, not the same lawsuit in which the judgment sought to be vacated was filed.” (Supplemental Report, ECF No. 92, PageID 1343).

Hobbs’ Fed.R.Civ.P. 60(d)(3) Motion remains pending on objections before Judge Barrett. Not content to wait for either the Sixth Circuit or Judge Barrett, Hobbs has filed the instant motion. But the instant Motion raises no issues which have not already been adjudicated by this Court. It is therefore respectfully recommended that the Motion be DENIED and the Court certify to the Sixth Circuit that any appeal would be objectively frivolous and therefore should not be permitted to proceed *in forma pauperis*.

August 16, 2019.

s/ **Michael R. Merz**  
United States Magistrate Judge

#### **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by mail. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party’s objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140, 153-55 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).

